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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 TERRANCE JON IRBY,

11 Plaintiff,

12 v.

13 MARGRET GILBERT, et al.,

14 Defendants.

CASE NO. C16-5052 RBL-JRC

REPORT AND RECOMMENDATION

NOTED FOR: MAY 19, 2017

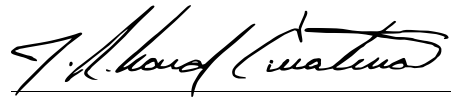
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16 Presently before the Court is defendants' motion to dismiss or for a more definite
17 statement. Dkt. 70. Defendants filed the pending motion to dismiss on March 6, 2017, asserting
18 plaintiff's original complaint failed to state a claim upon which relief could be granted. *See* Dkt.
19 70. After the motion to dismiss was filed, the Court granted plaintiff's motion to amend (Dkts,
20 57, 80), and plaintiff's first amended complaint has been filed (Dkt. 112).

21 An amended complaint supersedes the original complaint. *Ferdik v. Bonzelet*, 963 F.2d
22 1258, 1262 (9th Cir. 1992). The original complaint is "treated thereafter as non-existent." *Loux v.*
23 *Rhay*, 375 F.2d 55, 57 (9th Cir. 1967) *overruled on other grounds by Lacey v. Maricopa County*,
24 693 F.3d 896 (9th Cir. 2012). Defendants motion to dismiss attacks the original complaint, which

1 is now “non-existent.” Therefore, defendants’ motion to dismiss became moot with the filing of
2 the first amended complaint. Accordingly, the undersigned recommends defendants motion to
3 dismiss (Dkt. 70) be denied as moot.

4 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have
5 fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P.
6 6. Failure to file objections will result in a waiver of those objections for purposes of *de novo*
7 review by the district judge, *see* 28 U.S.C. § 636(b)(1)(C), and can result in a result in a waiver
8 of those objections for purposes of appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *Miranda v.*
9 *Anchondo*, 684 F.3d 844, 848 (9th Cir. 2012) (citations omitted). Accommodating the time limit
10 imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on **May 19, 2017**,
11 as noted in the caption.

12 Dated this 26th day of April, 2017.

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14 J. Richard Creatura
15 United States Magistrate Judge
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